IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.MC.No. 3206 of 2007()

STC.215/2007 of JUDL. MAGISTRATE OF FIRST CLASS-II, HOSDRUG

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PETITIONER: ACCUSED

SMT.MISRIYA, AGED 45 YEARS,
W/O.MUHAMMED NOSHA, BOMBARNA VALAPPU HOUSE,
P.O.BOMBARNA,KASARAGOD TALUK, KASARAGOD DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS: COMPLAINANT

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1. STATE
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. P.ABDUL AZEEZ, AGED 55 YEARS,
S/O.MUHAMMED HAJI, RESIDING AT SALAMATH MANZIL,
THAIKADAPPURAM, NEELESWAR VILLAGE, HOSDURG TALUK,
P.O.THAIKADAPPURAM, KASARAGOD DISTRICT.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3206 of 2007

Dated this the 18th day of October 2007

O R D E R

The petitioner, a woman, faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. Cognizance has been taken on 15/2/2007. The petitioner has not entered appearance so far personally. She has entered appearance through counsel. She has been filing applications to excuse her absence from time to time. The learned Magistrate has not allowed the said request and has now chosen to issue non-bailable warrant against the petitioner. Such warrant of arrest issued by the learned Magistrate is chasing the petitioner.

2. According to the petitioner, the petitioner is pregnant now and is unable to appear before the learned Magistrate. The warrant of arrest issued by the learned Magistrate, if executed, would cause great hardship and prejudice to the petitioner. It is, in these circumstances, prayed that appropriate directions may be issued under Section 482 Cr.P.C.

3. The allegations against the petitioner is only under Section 138 of the Negotiable Instruments Act. It is not

necessary to invariably insist on the personal presence of the accused in such a case. But the petitioner must certainly apply for exemption from personal appearance under Section 205 Cr.P.C before the learned Magistrate. If the petitioner, a woman, is pregnant and she is facing allegation only in a prosecution under Section 138 of the Negotiable Instruments Act, I can find no reason why such an application for personal exemption would not be considered by the learned Magistrate. But it is seen that the petitioner has not made such an application so far. It is for the petitioner to apply for exemption before the learned Magistrate. Thereupon the learned Magistrate must pass appropriate orders. It is submitted that now a warrant of arrest is issued against the petitioner and unless the petitioner appears personally, her application for exemption may not be considered. I find no reason to insist on appearance of the petitioner personally before an application under Section 205 Cr.P.C is considered. This is so, inspite of the fact that a warrant of arrest has been issued. I am satisfied that appropriate direction can be issued.

4. In the result, this petition is allowed in part. Following directions are issued:

i) Warrant of arrest issued against the petitioner shall not be executed till 29/10/2007.

ii) In the meantime, the petitioner can appear before the learned Magistrate through counsel and make an application under Section 205 Cr.P.C.

iii) Appropriate orders on merits must be passed on such application by the learned Magistrate.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007